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15  
16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18 OAKLAND DIVISION

19  
20  
21 UNITED STATES OF AMERICA,  
22 Plaintiff,  
23 v.  
24 MATTHEW LLANEZA,  
25 Defendant.

26 Case Nos.: CR 13-00145 YGR

27  
28 **MATTHEW LLANEZA'S  
SUPPLEMENTAL BRIEF IN SUPPORT  
OF MOTION FOR COMPASSIONATE  
RELEASE**

29  
30  
31 **PRELIMINARY STATEMENT**

32  
33 Matthew Llaneza—who has either undergone or is in the midst of transgender hormone  
34 treatment—has filed a pro se motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A).  
35 Undersigned counsel has filed a notice of appearance. After reviewing her motion, counsel believes  
36 that she correctly cites the basis for the Court's jurisdiction under the relevant statute, and has  
37 supplied the Court with sufficient evidence that she has exhausted her administrative remedies prior  
38 to filing. This brief supplements her motion.

1 ARGUMENT  
2  
3I. Matthew has Sufficiently Demonstrated Extraordinary and Compelling Reasons Justifying Relief  
4A. Physical Health Conditions  
5

Matthew has suffered from asthma for most of her life. As her motion indicates, it was a disqualifying condition for service with the Marine Corps.<sup>1</sup>

This Court and the government have recognized that chronic asthma “presents an extraordinary and compelling reason’ warranting compassionate release, ‘given the current pandemic and the likelihood that [an inmate] would potentially suffer severe symptoms due to [his] personal health characteristics’ if [he] contracted Covid-19.” *United States v. Fowler*, No. 17-CR-00412-VC-1, 2020 WL 3034714 (N.D. Cal. June 6, 2020) (quoting government’s opposition; brackets modified).

As of this date, defense counsel is attempting to determine in what manner “valley fever” or male-to-female hormone therapy might put a person at higher risk for a severe COVID-19 infection if the virus is contracted.

B. Mental Health Conditions  
14

Matthew’s mental illness is relevant to this motion for separate, but related, reasons. First, there is the potential effect of a COVID-19 infection on persons with mental disorders. Second, Matthew’s disorders—or more precisely, the extent to which his disorders played a part in his underlying conviction—suggest that he is at low risk of recidivism.

1. COVID-19 and potential associations with mental disorders.  
20

Research suggests that COVID-19 is associated with a “wide range of psychiatric and neurological complications.”<sup>2</sup> While there is not a great deal of available data, the ability of the novel coronavirus to reach and affect the brain is documented. *Id.* What is unknown, and therefore more disturbing, is how this might play out for persons such as Matthew who have serious existing mental illnesses. Given the increased risk of transmission and infection among incarcerated persons, it is

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<sup>1</sup> Matthew apparently did not disclose that he had asthma when he enlisted; it was later discovered after a pulmonary function test.

<sup>2</sup> Available at <https://www.statnews.com/2020/06/25/covid-19-brain-complications/>.  
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1 especially important to minimize that potential for those that might suffer more severe psychosis if  
 2 they contract the virus.

3 **2. Matthew has a Low Risk of Recidivism**

4 In her motion, Matthew mentions that she has a low risk of recidivism and has attached an  
 5 exhibit confirming that her “Recidivism Risk Level” is low. This merits elaboration. First, the  
 6 assessment appears to have been conducted by personnel at FCI Sheridan late last year. FCI Sheridan  
 7 is a medium security facility, suggesting that the Bureau of Prisons does not consider Matthew to  
 8 present a high risk of danger.

9 Second, and equally important, is the nature of the underlying case: while it involved very  
 10 serious conduct, there nonetheless was a mental health component that suffused every aspect. To  
 11 reprise, Matthew pleaded guilty to attempted use of a weapon of mass destruction after an undercover  
 12 FBI agent, posing as a jihadist, helped instigate a plot to blow up a bank building. At sentencing  
 13 Matthew’s demonstrable mental illness was front and center. For example, she made claims of being  
 14 a trained military operative with bomb-making experience, training others in tactical warfare,  
 15 building unmanned drones and having worked with drug cartels. Matthew also claimed to have been  
 16 in hiding since 2005 because of death threats against her. Of course, none of this was true.

17 During the course of the proceeding, Dr Scott Lines examined Matthew to determine whether  
 18 she manifested a high degree of suggestibility while in the manic phase of her bipolar disorder, as is  
 19 common for those suffering from this particular mental disease. Dr Lines explained:

20 These are clear manifestations of the irrational flight of ideas found in the typical manic  
 21 episode. Similarities exist between these bizarre ideas and the irrational thought  
 22 processes found at the root of his alleged offense conduct. An idea occurs to him, or in  
 23 the case of his alleged offense conduct, is offered to him, and when he is manic the  
 24 irrational idea conforms to the desire to stimulate chaos and disorder, reflective of the  
 25 chaos and disorder he feels while under the sway of his mental disorder.

26 In the same vein, defense counsel suggested that the government agent’s conduct trod close to  
 27 entrapment. Even the probation officer’s sentencing recommendation noted that Matthew had taken  
 28 no overt steps to plan a terrorist attack prior to meeting the agent, and that there was no evidence that  
 Matthew would or could have carried out this contrived plot without the agent’s active participation.

1 Ultimately, however, the parties and probation officer jointly recommended a sentence of 180  
 2 months, which the Court adopted. This case therefore is distinguishable from cases where the  
 3 defendant's mens rea, criminal propensity and danger to the community are clearly established.  
 4

5 Moreover, Matthew's criminal history was overstated. As defense counsel pointed out at  
 6 sentencing, Matthew's sole prior contact with the criminal justice system was an arrest for being  
 7 under the influence of a controlled substance and the related, subsequent conviction for possessing an  
 8 assault weapon. PSR, ¶¶ 39, 44. But that arrest arose when Matthew's father found an AK-47 in a  
 9 safe in Matthew's recreational vehicle and turned it over to San Jose Police. Notably, Matthew had  
 10 legally purchased and possessed the rifle in Arizona; she was not aware that possessing such a rifle  
 11 was illegal in the State of California. Nonetheless, the applicable guidelines provision for the offense,  
 12 USSG §3A1.4, automatically placed Matthew in Criminal History Category VI.  
 13

14 Together, the foregoing factors demonstrate that Matthew has been mentally ill nearly all of his  
 15 life, but, given his lack of a serious prior criminal history and the BOP's assessment that he poses a  
 16 low risk of recidivism, that section 3553(a) factors counsel in favor of a sentencing reduction.  
 17

## II. Matthew has Served Over 50% of her Sentence

18 Matthew has been in custody for 7.5 years; with good time credits, she has served over one-half  
 19 of her sentence. The government may argue that this is insufficient time in custody to merit a  
 20 reduction, but there is no magic number minimum. To the contrary, there are many instances in  
 21 which district courts have granted compassionate release to persons who have served *less* than 50%  
 22 of their sentence: *United States v. Robinson*, 18-03042-04-CR-S-SRB (W.D.Mo.) (served  
 23 approximately 28 months of 132 month sentence); *United States v. Harrison*, 17-00264-01-CR-W-  
 24 GAF (W.D. Mo.) (served approximately 23 months of 112 month sentence); *United States v.*  
 25 *Rodriguez-Acedo*, Case No. 19-cr-3539, Dkt. No. 44 (S.D. Cal. July 21, 2020) (served approximately  
 26 11 months of a 37 month sentence); *United States v. Tubbs-Smith*, No. 18-20310, , Dkt. No. 65 (E.D.  
 27 Mich. July 2, 2020) (release after 26 months of 10 year sentence to serve state sentence); *United*  
 28 *States v. Torres*, 2020 WL 4019038 (S.D. Fla., July 14, 2020) (5 months into 24 month sentence);  
*United States v. Loyd*, No. CR 15-20394-1, 2020 WL 2572275 (E.D. Mich. May 21, 2020) (release

1 after 3 years of 10 year sentence); *United States v. Locke*, No. 18-cr-132, 2020 WL 3101016, at 1, 6  
 2 (W.D. Wash. June 11, 2020) (compassionately releasing a defendant who had “served no more than  
 3 six months of his 62-month sentence”); *United States v. Brown*, Case No. 2:18-cr-360, Dkt. No. 35  
 4 (N.D. Ala. May 22, 2020) (granting compassionate release to defendant 11 months into 60 month  
 5 sentence); *United States v. Ben Yhwh*, --- F. Supp. 3d ---, 2020 WL 1874125, at \*2 (D. Hawaii Apr.  
 6 13, 2020) (granting compassionate release to defendant less than 13 months into 60 month sentence);  
 7 *United States v. Delgado*, 2020 WL 2464685, at \*1, \*4 (D. Conn. Apr. 30, 2020) (granting  
 8 compassionate release to defendant 29 months into 120 month sentence); *United States v. Winston*,  
 9 Case No. 1:13-cr-639-RDB, Dkt. No. 295 (D. Md. Apr. 28, 2020) (granting compassionate release to  
 10 defendant 36 months into 120 month sentence).

11 These sentences confirm that there is no hard and fast numerical standard governing  
 12 compassionate release. A reduced sentence for Matthew would be completely consistent with  
 13 available sentencing data.

14 **CONCLUSION**

15 Defense counsel is not yet in a position to suggest to the Court the extent of a sentence  
 16 reduction, and would first like to complete his review of Matthew’s medical records—both from the  
 17 BOP and those available from healthcare providers who treated Matthew prior to his arrest—and  
 18 further consultation with medical professionals. It is anticipated that this process will be complete at  
 19 the time the reply brief is due to be filed.

21 Dated: August 12, 2020

22 Respectfully submitted,

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